

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LISA NEAL,

Plaintiff,

v.

CITY OF BAINBRIDGE ISLAND,

Defendant.

CASE NO. 3:20-cv-06025-DGE

ORDER GRANTING IN PART  
AND DENYING IN PART  
PLAINTIFF'S MOTION TO  
COMPEL (DKT. NO. 48)

This matter comes before the Court on Plaintiff's motion to compel. (Dkt. No. 48.)

Having reviewed the motion, all supporting materials, and the record, the Court GRANTS in PART and DENIES in part Plaintiff's motion.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

This case arises from events surrounding the City Council of Bainbridge Island's vote to remove Plaintiff from her position as a citizen volunteer member of the Island Center Subarea Planning Process Steering Committee ("the Committee") in August 2018.

1 On December 29, 2021, the Court denied the City of Bainbridge Island's ("the City")  
2 motion to dismiss. (Dkt. No. 29.) On January 11, 2022, Plaintiff filed a Second Amended  
3 Complaint. (Dkt. No. 30.) On May 25, 2022, the Court granted a motion to continue the trial, in  
4 part to allow time for additional discovery, which to that point totaled approximately 28,000  
5 pages of material. (Dkt. Nos. 32 and 34.)

6 In her Second Amended Complaint, Plaintiff contends that in voting to remove her from  
7 the Committee, the City Council made false allegations against her, resulting in significant  
8 sleeplessness, worry and distress. (Dkt. No. 30 at 37.) Plaintiff contends that these allegations,  
9 which were recorded and made in a public forum, could lead current or future employers and  
10 clients to form an adverse opinion of her. (*Id.*) Plaintiff argues that these false statements were  
11 made to retaliate against Plaintiff for her opposition to the city government's pro-growth culture,  
12 to sideline and diminish her in the community, and to chill and marginalize her speech and the  
13 speech of others who might be inclined to speak out on the same issues. (*Id.* at 4.)

14 Plaintiff brings several claims against the City based on these events, including: 1)  
15 Violation of the First and Fourteenth Amendments pursuant to 42 U.S.C. § 1983, 2) Defamation,  
16 3) Negligent or Intentional Infliction of Emotional Distress, 4) Violation of Revised Code of  
17 Washington 42.56 (the Public Records Act), and 5) Violation of Revised Code of Washington  
18 4.24.510. (*Id.* at 45-55.)

19 In July 2022, the parties contacted the Court requesting a status conference to address a  
20 discovery dispute. (Dkt. No. 37.) The Court ordered the parties to submit a joint statement  
21 regarding their dispute. (*Id.*) The parties submitted their joint statement on July 29, 2022. (Dkt.  
22 No. 40.)

1 On August 2, 2022, the Court held a status conference concerning the parties' discovery  
2 dispute. (Dkt. No. 41.) During the conference, Plaintiff argued that Defendant improperly  
3 objected to certain discovery requests as disproportionate to the needs of the case. (*Id.* at 4.)  
4 Defendant contended that it had made a reasonable effort to search for the documents requested  
5 by Plaintiff and produced a significant number of documents dating back to 2001, but maintained  
6 that Plaintiff's requests were far broader than the needs of the case. (*Id.* at 5-7.)

7 When asked what documents Defendant failed to produce, Plaintiff cited 300 public  
8 comments available on the City's website, which Plaintiff contends Defendant should have  
9 produced in response to Plaintiff's request for production of all documents relating to the Island  
10 Center subarea planning process. (*Id.* at 7-8.) When asked to explain the relevance of these  
11 public comments to her causes of action, Plaintiff responded that:

12 The actual removal, the discrete -- you know, the August 14, 2018 event,  
13 that's the culminating event. The issue becomes: What led up to it?

14 In order to prove that [Plaintiff] was removed as a pretense, she has to  
15 show that there was this overarching pro-development stance, and that  
16 does go back to before 2000 actually. That's why these things are relevant.

17 [Plaintiff] has to show that it is more likely than not that there is a pro-  
18 growth movement afoot and that she was deliberately silenced and  
19 unconstitutionally silenced by an overarching pro-growth movement that  
20 is run from a largely behind-the-scenes group of folks, almost all of which  
21 have been identified in plaintiff's Complaint and discovery documents.

22 (*Id.* at 10.)

23 Plaintiff also objected to Defendant's alleged refusal to identify managing or speaking  
24 agents. (*Id.* at 20-21.)

25 Defendant stated that the City searched for the documents requested, and was unaware of  
26 any documents in the City's possession that it had chosen not to produce. (*Id.* at 13-15.)  
27 Defendant objected to discovery concerning certain reservation of rights letters, arguing that the

1 City is part of a risk pool, and that reservation of rights letters could contain privileged attorney  
2 work product. (*Id.* at 16-18.)

3 The Court advised the parties that it would not compel discovery of documents the City  
4 did not possess, and would not order former employees or other people not under the City's  
5 control to produce documents. (*Id.* at 15-16.)

6 On August 23, 2022, Plaintiff sent Defendant a letter again arguing that Defendant should  
7 have produced the 300 public comments available on the City's website. (Dkt. No. 49 at 25-30.)  
8 Plaintiff also itemized several categories of documents that Defendant allegedly failed to  
9 produce, and re-stated her objection to Defendant's alleged refusal to identify managing or  
10 speaking agents. (*Id.* at 27-30.)

11 On October 7, 2022, Plaintiff sent Defendant another letter, re-stating her concerns about  
12 speaking agents and other matters, and stating that "to the extent [the City] has raised improper  
13 objections to shield responsive documents from discovery, refused to answer Interrogatories  
14 based on improper objections, failed to perform a search for documents, or to investigate to  
15 determine facts requested, Plaintiff reserves the right to seek sanctions." (*Id.* at 32-33.)

16 On November 3, 2022, Plaintiff filed a motion to compel discovery pursuant to Fed. R.  
17 Civ. P. 37(a)(3)(B)(iv). (Dkt. No. 48.) Defendant responded to Plaintiff's motion (Dkt. No. 50)  
18 and Plaintiff replied. (Dkt. No. 52.)

## 19 II. LEGAL STANDARD

20 "Discovery is supposed to proceed with minimal involvement of the Court." *F.D.I.C. v.*  
21 *Butcher*, 116 F.R.D. 196, 203 (E.D. Tenn. 1986). Counsel should strive to be cooperative,  
22 practical and sensible, and should seek judicial intervention "only in extraordinary situations that  
23 implicate truly significant interests." *In re Convergent Techs. Securities Litig.*, 108 F.R.D. 328,  
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331 (N.D. Cal. 1985). However, when a party fails to provide discovery and the parties' attempts to resolve the dispute without Court intervention are unsuccessful, the opposing party may seek an order compelling that discovery. Fed. R. Civ. P. 37(a)(1). The party that resists discovery has the burden to show why the discovery request should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975).

### III. DISCUSSION

#### A. Plaintiff's Motion to Compel

In her motion to compel, Plaintiff again raises Defendant's alleged failure to produce approximately 300 public comments available on the City's website. (Dkt. No. 48 at 2-3.)

Plaintiff states she obtained numerous documents via public records requests that she claims were responsive to various interrogatories and requests for production. (*Id.* at 4-5, 7-10.) Plaintiff contends Defendant's failure to produce these documents indicates Defendant did not perform an adequate search for documents responsive to Plaintiff's discovery requests. (*Id.* at 13.)

Plaintiff argues Defendant has improperly objected to certain discovery requests as disproportionate to the needs of the case because Plaintiff seeks documents pre-dating her removal from the Committee by several decades. (*Id.* at 6, 12.) In her motion, Plaintiff contends her request for production is restricted to documents from 2017. (*Id.*) Plaintiff re-stated her previous objections to Defendant's alleged failure to identify managing or speaking agents. (*Id.* at 11-12.) Plaintiff asks the Court to compel Defendant to produce documents from other lawsuits with the same or similar claims. (*Id.* at 12.)

**B. Defendant's Response**

Defendant contends Plaintiff made unreasonably broad discovery requests and that the City has produced thousands of documents in a good faith effort to adequately respond to Plaintiff's "seemingly limitless" requests. (Dkt. No. 50 at 1.) Defendant further contends Plaintiff refused to limit the scope of her discovery requests or provide useful guidance to the City concerning what information she sought. (*Id.*) Defendant argues Plaintiff moves to compel production of documents already in her possession, and that Plaintiff obtained copies of publicly available documents which she argues could have been responsive to her "vague and open-ended requests." (*Id.* at 1-2.)

Defendant contends Plaintiff could serve more specific discovery requests if she seeks information not contained in the documents already produced, and that Plaintiff's motion does not seek the production of additional, relevant information, but was instead filed "for purely punitive purposes." (*Id.* at 2.)

**C. Analysis**

In her motion, Plaintiff seeks to compel production of documents related to requests for production 1, 3, 4, 8, 10, 13, 14, 16, 17, 19, 21, and 26 and interrogatories 2, 3, 7, 8, 10, 11, and 14. (Dkt. No. 48 at 7-10.)

Federal Rule of Civil Procedure 26(b)(1) permits parties to obtain discovery regarding a nonprivileged matter that is "relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit."

1           However, Rule 26(b)(2)(C) provides that the Court must limit the frequency of discovery  
2 otherwise allowed by the federal civil rules or by local rule if the Court determines that: “(i) the  
3 discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other  
4 source that is more convenient, less burdensome, or less expensive; (ii) the party seeking  
5 discovery has had ample opportunity to obtain the information by discovery in the action; or (iii)  
6 the proposed discovery is outside the scope permitted by Rule 26(b)(1).” Fed. R. Civ. P.  
7 26(b)(2)(C)(i)-(iii).

8           1. Request for Production No. 1

9           Request for Production No. 1 seeks “all documents regarding the Island Center Subarea  
10 Planning Process.” (Dkt. No. 51-1 at 21.) Plaintiff contends the 300 public comments available  
11 on the City’s website relate to the Island Center subarea planning process, and argues  
12 Defendant’s failure to produce these documents indicates that Defendant did not perform an  
13 adequate search for documents responsive to Plaintiff’s request for production. (Dkt. No. 48 at  
14 2-3.)

15           Defendant contends that Plaintiff’s request is overly broad as to time period, author,  
16 subject matter, and form of document. (Dkt. No. 51-1 at 21.) Defendant further contends it has  
17 produced documents in response to this request, and that Plaintiff has requested and received  
18 additional responsive documents via a public records request. (*Id.*)

19           To the extent Plaintiff seeks production of publicly available documents already in her  
20 possession, the Court will not, and cannot, compel production of these documents. *Valenzuela v.*  
21 *Smith*, Case No. S 04-0900, 2006 WL 403842 at \*2 (E.D.Cal. Feb. 16, 2006) (“Defendants ...  
22 will not be compelled to produce documents that are equally available to plaintiff.”); *Baum v.*  
23 *Village of Chittenango*, 218 F.R.D. 36, 40–41 (N.D.N.Y.2003) (“[C]ompelling discovery from  
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1 another is unnecessary when the documents sought are equally accessible to all.”); *Bleecker v.*  
2 *Standard Fire Ins. Co.*, 130 F.Supp.2d 726, 738 (E.D.N.C.2000) (“Discovery is not required  
3 when documents are in the possession of or are readily obtainable by the party seeking a motion  
4 to compel.”); *S.E.C. v. Samuel H. Sloan & Co.*, 369 F.Supp. 994, 995–996 (S.D.N.Y.1973) (“It is  
5 well established that discovery need not be required of documents of public record which are  
6 equally accessible to all parties.”)

7 To the extent Plaintiff’s motion to compel asks the Court to sanction Defendant for its  
8 alleged lack of diligence in producing these publicly available comments, the Court declines to  
9 do so.

10 Plaintiff contends she only seeks information regarding the 2017 process, and is not  
11 seeking information dating back to 2001. (Dkt. No. 48 at 6-7.) Notwithstanding, the Court  
12 concludes “all documents regarding the Island Center Subarea Planning Process” is overbroad  
13 and is not proportional to the needs of the case. It is unclear to the Court how every potential  
14 document that in any way might reference the Island Center Subarea Planning Process is relevant  
15 to the specific claims asserted in this litigation. Plaintiff has been provided with what appears to  
16 be a significant number of documents related to the Island Center Subarea Planning Process. If  
17 there is a specific document Plaintiff believes is missing from those already produced, Plaintiff  
18 will need to identify what those documents might be so that Defendant can focus on producing  
19 those specific documents.

20 2. Request for Production No. 3

21 Request for Production No. 3 seeks production of “all communications between/among  
22 Sarah Blossom and Scott Anderson, Sue/Susan Anderson and/or Vernon Anderson.” (Dkt. No.  
23 51-1 at 22.) Plaintiff contends that this request seeks communications “among the persons who  
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1 had Plaintiff removed from the Committee and a Committee member who sought to upzone his  
2 own property, regarding that upzone.” (Dkt. No. 48 at 7.) Plaintiff contends that she was  
3 removed from the Committee after raising conflict of interest concerns regarding that  
4 Committee member. (*Id.*)

5 Defendant contends that this request is overly broad, unduly burdensome, is  
6 disproportionate to the needs of the case, and would result in the production of information not  
7 relevant to the case. (Dkt. No. 51-1 at 22.)

8 Plaintiff’s request for *all* communications between these individuals will almost certainly  
9 results in the production of a significant amount of material not relevant to Plaintiff’s claims, and  
10 the Court therefore finds this request to be unduly burdensome and disproportionate to the needs  
11 of the case.

12 3. Request for Production No. 4

13 Request for Production No. 4 asks for “all insurance reservation of rights letters, denials  
14 of insurance coverage, and other communications from insurers or risk pools issued to the City  
15 of Bainbridge Island regarding Plaintiff’s claims, including those made in this litigation, as well  
16 as Defendant’s responses to same.” (Dkt. No. 51-1 at 22.)

17 Defendant initially argued that it was not producing reservation of rights letters due to  
18 possible attorney-client privilege issues, but now states that it has produced all reservation of  
19 rights letters within its possession and control, and has no reason to believe any additional  
20 records exist. (Dkt. No. 51 at 2-3.) In response to Plaintiff’s request for production, Defendant  
21 produced a reservation of rights letter from the City’s insurance risk pool. (Dkt. No. 51-3 at 3-  
22 4.)

1 Plaintiff concedes that Defendant produced two reservation of rights letters in response to  
2 its request, but that Defendant has otherwise refused to answer her inquiries, and that it remains  
3 unclear whether Defendant has produced all responsive documents. (Dkt. No. 48 at 10.)

4 Under Federal Rule of Civil Procedure 34(a)(1) a party is required to produce requested  
5 documents if they are within his or her “possession, custody or control.” *Kissinger v. Reporters*  
6 *Committee for Freedom of the Press*, 445 U.S. 136, 165 n. 6 (1980) (Stevens, J., concurring in  
7 part and dissenting in part). Defendant claims that it has produced all reservation of rights letters  
8 within its possession, and there is not, based on the information currently before the Court,  
9 reason to believe Defendant possesses additional documents responsive to Plaintiff’s request.

10 4. Request for Production No. 8

11 Request for Production No. 8 asks Defendant to produce “all documents filed with the  
12 court or exchanged with party counsel related to all lawsuits brought against [the City] for  
13 violation of First Amendment Rights under either the U.S. Constitution or the Washington State  
14 Constitution.” (Dkt. No. 51-1 at 25.)

15 Defendant contends this request is overly burdensome and would require the City to  
16 perform an unreasonable amount of legal research regarding court documents that are equally  
17 accessible to Plaintiff. (*Id.*) Plaintiff argues that Defendant has easier access to certain  
18 discovery and party communications that are not publicly available. (Dkt. No. 48 at 10.)

19 Asking Defendant to produce *all* documents filed with the court or exchanged with party  
20 counsel relating to *all* lawsuits *ever* brought against the City for violations of the First  
21 Amendment would impose an unusually high burden on Defendant and would produce a great  
22 deal of material not relevant to Plaintiff’s causes of action. Plaintiff can access much of the  
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1 requested material herself. The Court therefore finds this request is unduly burdensome in time  
2 and scope and is disproportionate to the needs of the case.

3 5. Request for Production No. 10

4 Request for Production No. 10 seeks “copies of all blogs or social media postings  
5 created by you related to the Island Center Subarea Planning Process from 2016 to present.”  
6 (Dkt. No. 51-1 at 26.) Defendant has produced documents in response to this request, but  
7 Plaintiff contends she lacks confidence that all materials responsive to this request have been  
8 produced because Defendant continues to object to this request as overly broad, unduly  
9 burdensome, vague, and disproportionate to the needs of the case. (Dkt. Nos. 48 at 7; 51-1 at  
10 26.)

11 Despite Plaintiff’s lack of confidence, she does not argue that Defendant’s response to  
12 this request for production is deficient, or that there are specific social media posts or posts from  
13 certain periods missing from the documents produced by Defendant. Based on the information  
14 currently before the Court, there is no reason to believe Defendant possesses additional  
15 documents responsive to Plaintiff’s request.

16 6. Request for Production No. 13

17 Request for Production No. 13 asks Defendant to produce “all requests to [the City], the  
18 Planning Commission, or any other [City] body, to begin the Island Center Subarea Planning  
19 Process, as well as any [City] body’s responses to same.” (Dkt. No. 51-1 at 27-28.) Plaintiff  
20 contends that this request “may include communications from certain Committee members who  
21 later sought upzoning of their own property.” (Dkt. No. 48 at 7.) Defendant provided  
22 documents in response to this request, but Plaintiff claims that Defendant has not produced “any  
23 directly responsive communications.” (Dkt. Nos. 48 at 7; 51-1 at 27-28.)  
24

1 The fact that Defendant's response to Plaintiff's request for production did not contain  
2 the information Plaintiff expected does not necessarily render it deficient. Based on the  
3 information currently before the Court, there is no reason to believe Defendant possesses  
4 additional documents responsive to Plaintiff's request.

5 7. Request for Production No. 14

6 Request for Production No. 14 seeks production of "all communications from the City  
7 Attorney to the Island Center Committee, Staff assigned to the Island Center Committee, or  
8 members of the Island Center Committee regarding application of the Ethics Program to the  
9 Committee's work." (Dkt. No. 51-1 at 28.)

10 Defendant argues that Plaintiff's request is overly broad, unduly burdensome,  
11 disproportionate to the needs of the case and may seek the production of attorney-client  
12 privileged and/or work product information and is disproportionate to the needs of the case. (*Id.*)  
13 Defendant argues that it has produced documents in response to this request, and also notes that  
14 Plaintiff has already received non-privileged documents related to the City's ethics program in  
15 response to a public records request fulfilled in 2019. (*Id.* at 27-28.)

16 Plaintiff contends that Defendant has not produced any communications from the City  
17 Attorney, that the City has not produced a privilege log, and that attorney-client privilege does  
18 not apply because Plaintiff was a member of the Committee at the time of the alleged  
19 communication. (Dkt. No. 48 at 7.)

20 To the extent Plaintiff seeks the production of non-privileged materials regarding the  
21 City's ethics program, she appears to have received it in response to a public records request.

22 Regarding any responsive documents the City claims are protected by the attorney-client  
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1 privilege, the City shall produce a privilege log that complies with Federal Rule of Civil  
2 Procedure 26(b)(5).

3 As to the assertion that Plaintiff's Committee member status negates any attorney-client  
4 privilege, Plaintiff provides no authority to support this contention.

5 8. Request for Production No. 16

6 Request for Production No. 16 asks Defendant to "produce all Agendas, Minutes, and  
7 unredacted communications related to the removal of Plaintiff from the Island Center  
8 Committee." (Dkt. No. 51-1 at 29.) Plaintiff contends that no documents reflecting  
9 communications regarding Plaintiff's removal have been produced. (Dkt. No. 48 at 7.)

10 Defendant maintains its objection that this request is disproportionate to the needs of the  
11 case, but notes that it has produced documents responsive to Plaintiff's request as part of its  
12 general production, including City Council meeting materials such as minutes, agendas, and  
13 recordings. (Dkt. No. 51-1 at 29.) It is unclear to the Court why this request is disproportionate  
14 to the needs of the case, as a central focus of this case is Plaintiff's removal from the Island  
15 Center Subarea Planning Process Steering Committee. Presumably, the time frame of these  
16 communications would not be overly burdensome either, as Plaintiff's time on this Committee  
17 was limited.

18 Defendant shall supplement its response to this request for production. If all documents  
19 have already been produced, Defendant shall so state in its supplemental response.

20 9. Request for Production No. 17

21 Request for Production No. 17 seeks production of "all Agendas, Minutes and unredacted  
22 communications related to the removal/demotion of a citizen volunteer from the ETAC  
23 committee, discussed at the City Council meeting on August 14, 2018." (Dkt. No. 51-1 at 29.)  
24

1 Plaintiff contends that Defendant has not produced emails or other communications relating to  
2 the demotion of the citizen volunteer in question, and argues this information is relevant to her  
3 equal protection claim. (Dkt. No. 48 at 8.)

4 Defendant produced documents responsive to Plaintiff's request, but argues that this  
5 request calls for the production of information not relevant to Plaintiff's claims, and would be  
6 unduly burdensome because it would require Defendant to track down all communications  
7 related to the removal/demotion of an individual unrelated to Plaintiff's claims. (Dkt. No. 51-1  
8 at 29.) The Court agrees, and finds that Plaintiff's request as drafted is disproportionate to the  
9 needs of the case. However, Defendant is ordered to produce all agendas and minutes related to  
10 the removal/demotion of the individual referenced at the City Council meeting on August 14,  
11 2018. To the extent these documents have been produced, Defendant shall state this in its  
12 supplemental response.

13 10. Request for Production No. 19

14 Request for Production No. 19 seeks all documents supporting City Council member  
15 Sarah Blossom's August 14, 2018 City Council statement referring to Plaintiff's alleged  
16 actions/behavior: "we've had some Committee members resign because of this." (Dkt. No. 51-1  
17 at 30.)

18 Defendant produced documents in response to this request, but also argues that this  
19 request is overbroad, unduly burdensome, seeks information outside of the possession, custody,  
20 or control of Defendant, and is disproportionate to the needs of the case. (*Id.*) Defendant further  
21 argues that Plaintiff received documents responsive to this request via a public records request  
22 that was fulfilled in July 2020. (*Id.*)

1 Plaintiff appears to have the requested materials in her possession, and appears to have  
2 had them several months before she filed her lawsuit in October 2020. The Court is unclear what  
3 Plaintiff seeks to compel, and finds that this request is unduly burdensome and likely seeks  
4 information outside of Defendant's possession.

5 11. Request for Production No. 21

6 Request for Production No. 21 asks Defendant to produce "all Island Center Subarea  
7 Planning Process Related documents created, received, or held by any consultant interviewed,  
8 screened, and/or hired by [the City] to assist with the Island Center Subarea Planning Process."  
9 (Dkt. No. 51-1 at 31.)

10 Defendant produced documents in response to this request, but contends that the request  
11 is otherwise overbroad, unduly burdensome, disproportionate to the needs of the case, not limited  
12 in duration, and not likely to lead to admissible evidence. (*Id.*)

13 Plaintiff acknowledges that it has received "voluminous" communications responsive to  
14 this request via a public records request, but argues that the documents sought are relevant to  
15 establish that the City's staff and certain consultants who worked on the Island Center process  
16 worked "behind the scenes" in contravention of the Committee's votes. (Dkt. No. 48 at 8.)

17 Plaintiff appears to have the requested materials in her possession. Further, for the  
18 reasons discussed above in connection with Request for Production No. 1, the Court finds that  
19 this request is overly burdensome and disproportionate to the needs of the case.

20 12. Request for Production No. 26

21 Request for Production No. 26 seeks "all documents from 2011 to present reflecting  
22 training provided to [City] elected officials and staff regarding the Open Public Meetings Act,  
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1 recordation of minutes, civil rights, anti-discrimination law, and the Public Records Act.” (Dkt.  
2 No. 51-1 at 33.)

3 Defendant contends that this request is overbroad in scope and time period,  
4 disproportionate to the needs of the case, and unlikely to lead to admissible evidence at trial.  
5 (*Id.*) Defendant argues that this request seeks information pertaining to *all* City employees over  
6 a 10-year period, far beyond the scope of employees and relevant time period identified in  
7 Plaintiff’s complaint. (*Id.*) Defendant argues that it responded to this request by producing  
8 copies of policies and procedures and training documents for the City’s Public Records Officer  
9 and an Administrative Specialist with the City’s Planning and Community Development  
10 department that relate to the Public Records Act and/or records management. (*Id.*)

11 Plaintiff argues that she seeks information dating back to 2011 because Sarah Blossom  
12 was first elected to the city council that year, and that the City knows which staff members  
13 would have received training during that period. (Dkt. No. 48 at 8.)

14 The Court questions the relevance of Plaintiff’s request to her causes of action, and is  
15 unclear as to why the documents produced by Defendant are inadequate. The Court notes  
16 Plaintiff seeks documents from a period long before the incident giving rise to her causes of  
17 action, and finds Plaintiff’s request disproportionate to the needs of the case and unlikely to  
18 produce any documents relevant to Plaintiff’s claim.

19 13. Interrogatories Nos. 2 and 3

20 Interrogatory No. 2 asks Defendant to identify “all persons involved in the Island Center  
21 Subarea Planning Process.” (Dkt. No. 51-1 at 3.) Interrogatory No. 3 asks Defendant to identify  
22 “all persons with knowledge of facts relevant to this lawsuit and for each person identified, and  
23 please state all the facts with respect to their knowledge.” (*Id.* at 6-7.)  
24



1 Plaintiff argues that Defendant supplemented contact information for some individuals,  
2 but failed to provide home address and telephone information for all employees and failed to  
3 provide any specific information regarding the knowledge certain persons may hold. (Dkt. No.  
4 48 at 8-9.)

5 Defendant argues that it has supplemented its responses to these interrogatories multiple  
6 times and provided names, email addresses, and phone numbers for numerous individuals, even  
7 though many of these individuals are not City employees. (Dkt. No. 51 at 7.) Defendant adds  
8 that it identified which individuals were involved with the planning process, identified who  
9 attended the City Council meeting at which Plaintiff was removed and identified their  
10 position/involvement. (*Id.*)

11 Defendant contends it has made a reasonable inquiry concerning the contact information  
12 of individuals involved in the planning process or with knowledge of the lawsuit, but lacks  
13 sufficient information to confirm or deny whether more updated or additional information exists  
14 outside of the City's control. (Dkt. No. 51-1 at 5-10.) However, Defendant contends it would be  
15 unduly burdensome, overbroad, and disproportionate to the needs of the case for the City to  
16 contact everyone who may have knowledge of the facts related to Plaintiff's claims, because her  
17 claims largely involve public statements made at public events. (*Id.* at 7.)

18 In its responses to Interrogatory No. 2, Defendant identified numerous people involved  
19 with the planning process, and provided what appear to be home addresses and telephone  
20 numbers for many of them. (*Id.* at 3-6.) In response to Interrogatory No. 3, Defendant identified  
21 numerous people who had knowledge of the facts relevant to Plaintiff's lawsuits, including  
22 individuals who provided public comment at the August 14, 2018 city council meeting, and  
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1 provided contact information for these individuals that Defendant was able to obtain after a  
2 reasonable search. (*Id.* at 6-11.)

3 With respect to Interrogatory No. 2, Defendant appears to have provided home addresses,  
4 home phone numbers, and email addresses for most of the individuals involved with the planning  
5 process, omitting only the contact information of those individuals to be contacted via counsel.  
6 (*Id.* at 4-6.)

7 To the extent that Defendant does not have the contact information Plaintiff seeks, and  
8 cannot obtain it after a reasonable search, the Court cannot compel its production. The Court  
9 finds that Defendant has provided information responsive to Interrogatory No. 2, and compelling  
10 Defendant to conduct further searches for the contact information of unidentified individuals  
11 would be unduly burdensome and unlikely to yield additional relevant information.

12 As for Interrogatory No. 3, Plaintiff's request that Defendant produce all facts with  
13 respect to the knowledge of certain individuals regarding this lawsuit would appear to require  
14 Defendant to conduct interviews of the individuals named by Defendant in response to  
15 Interrogatory No. 2. If Plaintiff wishes to determine what certain individuals know about the  
16 facts of this case, she may contact them herself, either through counsel or by utilizing the contact  
17 information provided in response to Interrogatory No. 2. The Court notes that at the time  
18 Plaintiff's motion was filed, she had apparently not scheduled any depositions. (Dkt. No. 60.)

19 Accordingly, the Court finds that Defendant has substantially responded to Interrogatory  
20 No. 3, and that to the extent Plaintiff seeks knowledge of certain individuals regarding the facts  
21 underlying this action, this request is overly broad and unduly burdensome.

1       14. Interrogatory No. 7

2           Interrogatory No. 7 asks Defendant to identify “all communications, whether oral or  
3 written, between or among Sarah Blossom, Doug Schulze, Jennifer Sutton, Gary Christensen,  
4 Maradel Gale, and/or [the City] related to the Plaintiff.” (Dkt. No. 51-1 at 12-13.)

5           Defendant argues that this request is overbroad, unduly burdensome, and disproportionate  
6 to the needs of the case because there is no limitation to the time period covered by the request.  
7 (*Id.*) Plaintiff re-states her argument that she received via public records requests documents  
8 related to this interrogatory that Defendant should have produced in discovery. (Dkt. No. 48 at  
9 9.)

10          For the reasons discussed above in connection with Requests for Production Nos. 1 and  
11 20, the Court cannot and will not compel discovery of documents that Plaintiff has already  
12 obtained via public records requests. Further, to the extent that Plaintiff seeks communications  
13 from a period not relevant to her cause of action, the Court finds that this interrogatory is overly  
14 broad, unduly burdensome, and disproportionate to the needs of the case.

15       15. Interrogatory No. 8

16           Interrogatory No. 8 asks Defendant to identify all persons the City “contends are  
17 managing or speaking agents for the City of Bainbridge Island.” (Dkt. No. 51-1 at 13.) During  
18 the August 2, 2022 hearing, Plaintiff stated that she wanted Defendant to identify the City’s  
19 speaking agents because she was concerned about being sanctioned if she contacted individuals  
20 with speaking authority for the City because they are represented by counsel. (Dkt. No. 41 at 20-  
21 21.) Plaintiff argues that Defendant’s claim that Plaintiff must contact certain employees only  
22 through counsel implies that the City considers these individuals to be managing or speaking  
23 agents. (Dkt. No. 48 at 9.)

1 Defendant contends that the designation of managing or speaking agents is a legal  
2 conclusion that depends on the specific, facts, context, time frame, and other circumstances  
3 involved in an interaction or communication. (*Id.*) Defendant contends that it has identified  
4 certain City personnel, such as the City Attorney and City Clerk to be contacted via the City's  
5 defense counsel because contact with these individuals may raise issues concerning  
6 "attorney/client communications and/or work product, to which the witness may have been privy  
7 to and which privileges belong to the City, not any individual." (Dkt. No. 50 at 8.)

8 During the hearing, the Court instructed counsel for Defendant to prepare an updated list  
9 of potential witnesses with information about the case and to designate those individuals that  
10 should only be contacted through counsel. (Dkt. No. 41 at 23-26.) The Court stated that once  
11 this list was complete, Plaintiff would be free to contact any individuals that Defendant did not  
12 require to be contacted via counsel. (*Id.* at 26.)

13 As discussed above in connection with Interrogatories 2 and 3, Defendant has produced  
14 an updated list of individuals who may have knowledge of Plaintiff's case, and has designated  
15 which of those individuals may only be contacted through counsel. (Dkt. No. 51-1 at 3-11.)  
16 Accordingly, Plaintiff may contact those individuals not so designated without having to notify  
17 opposing counsel.

18 16. Interrogatory No. 10

19 Interrogatory No. 10 asks Defendant to identify "the person or persons who placed the  
20 removal of Plaintiff (whether identified by name, or not) from the Island Center Committee on  
21 the agenda for the August 14, 2018 City Council meeting." (Dkt. No. 51-1 at 14.)

22 Defendant contends that this interrogatory is vague as to the meaning of identity  
23 "whether identified by name, or not." (*Id.*) Plaintiff contends that she has repeatedly explained  
24

1 the meaning of this phrase, but has not provided clarification for the Court in her motion to  
2 compel. (Dkt. No. 48 at 9.)

3 In seeking information about an individual, “whether identified by name, or not”,  
4 Plaintiff may be seeking communications in which her removal is discussed, even though she is  
5 not mentioned by name. However, as phrased, Plaintiff’s request could also be interpreted as  
6 seeking the identity of the individual who placed Plaintiff’s removal on the city council agenda.  
7 Accordingly, the Court agrees that this interrogatory is vague as written.

8 17. Interrogatory No. 11

9 Interrogatory No. 11 seeks “all meetings, including agenda setting meetings, at which  
10 removal of Plaintiff (whether identified by name, or not) from the Island Center Committee was  
11 discussed.” (Dkt. No. 51-1 at 14.)


12 Defendant has produced City Council meeting materials, including minutes, agendas, and  
13 recordings, and Plaintiff states that in reviewing these documents, she found at least one agenda  
14 setting where her removal was discussed. (Dkt. No. 48 at 9-10.) Plaintiff’s motion is unclear  
15 concerning which, if any, meeting records were omitted from Defendant’s production, and the  
16 Court will not compel production of materials already in Plaintiff’s possession.

**IV. ORDER**

Having considered Plaintiff's Motion to Compel, the Court GRANTS in part and DENIES in part Plaintiff's motion as follows:

1. Defendant SHALL produce a privilege log that complies with Federal Rule of Civil Procedure 26(b)(5) regarding Request for Production No. 14 no later than March 10, 2023.
2. Defendant SHALL supplement its responses to Request for Production Nos. 16 and 17 no later than March 10, 2023.
3. As to all other discovery requests, Plaintiff's Motion is DENIED.
4. Because Plaintiff's motion was granted in part and denied in part, the Court may, pursuant to Federal Rule of Civil Procedure 37(a)(5)(C), apportion the reasonable expenses for the motion after giving the parties an opportunity to be heard. Exercising its discretion, the Court declines to apportion payment of expenses; each party is apportioned its own fees and costs.

Dated this 24th day of February, 2023.

  
\_\_\_\_\_  
David G. Estudillo  
United States District Judge